

Message Text

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SUBJECT: CCD-NUCLEAR-WEAPON-FREE-ZONE STUDY

REF: GENEVA 6218

FOLLOWING IS TEXT OF FINAL DRAFT OF CHAPTER V
(VERIFICATION AND CONTROL) OF NWFZ STUDY. THERE
MAY BE FURTHER LANGUAGE CHANGES IN PARA 18 AND 21
BEFORE CHAPTER IS CONSIDERED AD REFERENDUM,
BUT THEY ARE NOT EXPECTED TO BE SUBSTANTIAL.
BEGIN TEXT

V. VERIFICATION AND CONTROL

1. OBJECTIVE AND SCOPE

1. THE QUESTION OF VERIFICATION AND CONTROL OF COMPLIANCE BY STATES
PARTIES WITH THE OBLIGATIONS OF THEIR AGREEMENTS IN THE FIELD OF
ARMS LIMITATION, DISARMAMENT AND COLLATERAL DISARMAMENT MEASURES HAS
ALWAYS BEEN IN THE FOCUS OF NEGOTIATIONS. THE PAST SOLUTIONS TO
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THAT PROBLEM HAVE DIFFERED FROM TREATY TO TREATY, DEPENDING UPON

THE NATURE AND THE SCOPE OF OBLIGATIONS CONTAINED THEREIN. AS TO NUCLEAR-WEAPON-FREE-ZONES, BOTH THE TREATY OF TLATELOLCO AND THE TREATY OF ANTARCTICA INCLUDE PROVISIONS FOR THE VERIFICATION TO ENSURE THE ABSENCE OF NUCLEAR WEAPONS FROM THEIR RESPECTIVE AREAS OF APPLICATION BUT THEIR VERIFICATION PROCEDURES DIFFER SUBSTANTIALLY.

2. AN EFFECTIVE VERIFICATION SYSTEM WOULD CREATE CONFIDENCE AMONG THE STATES MEMBERS OF THE ZONE AND THEIR RELATION TO EXTRA-ZONAL STATES. IT WOULD ALSO OFFER ASSURANCES THAT THERE WAS NO DIVERSION BY ZONAL STATES OF NUCLEAR MATERIAL TO NUCLEAR WEAPONS IN THE ZONE AND WOULD THEREBY FACILITATE CO-OPERATION IN THE PEACEFUL USE OF NUCLEAR ENERGY AMONG THE ZONAL STATES AND BETWEEN THEM AND STATES OUTSIDE THE ZONE.

3. IN ORDER TO ENSURE THAT A NUCLEAR-WEAPON-FREE ZONE WILL FUNCTION EFFECTIVELY, IT IS NECESSARY TO DIVISE A SYSTEM OF VERIFICATION AND CONTROL TO ENSURE THAT ALL THE STATES INVOLVED ARE COMPLYING WITH THEIR OBLIGATIONS. THE PRECISE NATURE OF THE VERIFICATION AND CONTROL SYSTEMS WOULD VARY FROM REGION TO REGION AND WOULD DEPEND UPON THE TYPE OF OBLIGATIONS WHICH ARE TO BE UNDERTAKEN BY PARTIES TO A TREATY ESTABLISHING THE NUCLEAR-WEAPON-FREE ZONE. GENERALLY, THE TREATY WOULD HAVE TO INCLUDE PROVISIONS FOR VERIFYING THE STRICT COMPLIANCE WITH OBLIGATIONS AND THE CONSIDERATION

OR SETTLEMENT OF ISSUES ON NON-COMPLIANCE THAT MAY ARISE. MOST EXPERTS FELT, IN THIS CONNECTION, THAT THE MEASURES OF VERIFICATION AND CONTROL SHOULD BE EXTENDED TO ALL NUCLEAR ACTIVITIES IN ZONAL STATES SO AS TO PREVENT ANY DIVERSION FROM PEACEFUL PURPOSES. PRESCRIBED SYSTEMS MAY INCLUDE BOTH ROUTINE AND AD HOC PROCEDURES AND SHOULD ASSURE A SUFFICIENT PROBABILITY OF DETECTING VIOLATIONS. SUCH SYSTEMS SHOULD BE BASED ON THE PRINCIPLE OF COMPLETE EQUALITY OF STATES.

4. AN EFFECTIVE VERIFICATION AND CONTROL SYSTEM MIGHT GENERALLY INCLUDE FACT-FINDING MACHINERY, A PROCEDURE FOR CONSULTATIONS BETWEEN INDIVIDUAL STATES AND A FORUM FOR MULTILATERAL CONSULTATIONS, RECOMMENDATIONS AND OTHER ACTIONS. IF OTHER TREATIES ON ARMS LIMITATIONS, DISARMAMENT AND COLLATERAL DISARMAMENT

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MEASURES ARE IN FORCE FOR ZONAL STATES, THE HARMONIZATION AND CO-OPERATION BETWEEN THEIR RESPECTIVE CONTROL SYSTEMS COULD BE BENEFICIAL. THE CO-OPERATION BETWEEN CONTROL SYSTEMS OF VARIOUS NUCLEAR-WEAPON-FREE ZONES MIGHT ALSO BE OF VALUE.

5. AS TO THE FACT-FINDING PART OF A CONTROL SYSTEM, STATES WOULD ALWAYS HAVE THE RIGHT TO USE THEIR NATIONAL MEANS OF VERIFICATION IN ACCORDANCE WITH INTERNATIONAL LAW. ADDITIONAL INVESTIGATION

MEASURES REQUIRING THE CO-OPERATION OF PARTIES SHOULD BE
PRESCRIBED IN THE TREATY IN ORDER TO ENSURE THE EFFETIVENESS
OF THE ZONE.

6. THE TASK OF VERIFYING A NUCLEAR-WAPON-FREE ZONE AGREEMENT
WOULD FALL INTO TWO MAIN CATEGORIES. ONE IS TO ENSURE THAT ZONAL
STATES DO NOT DEVELOP OR PRODUCE NUCLEAR WEAPONS. THE OTHER IS TO
ENSURE THAT THE ZONE IS EFFECTIVELY FREE OF NUCLEAR WEAPONS COMING
FROM OUTSIDE SOURCES AND THAT SUCH WEAPONS ARE
WITHDRAWN IF THEY ARE PRESENT IN THE ZONE. THE FIRST ASPECT
COULD BE COVERED BY APPLYING IAEA SAFEGUARDS TO ALL NUCLEAR
MATERIALS IN ZONAL STATES. SUCH SAFEGUARDS WOULD PROVIDE
BOTH FOR NECESSARY VERIFICATION ON A ROUTINE BASIS THAT
SUCH MATERIALS ARE NOT DIVERTED TO NUCLEAR WEAPONS AND ALSO FOR A
REPORTING PROCEDURE ON DISCLOSURES OF EVENTS OF POSSIBLE NON-COMPLIAN
CE.

SOME EXPERTS NOTED THAT THE IAEA SAFEGUARDS CAN BE APPLIED NOT ONLY
TO THE USE OF PARTICULAR NUCLEAR MATERIALS, BUT ALSO TO
OTHER ASPECTS OF NUCLEAR ACTIVITIES OF STATES INCLUDED IN A ZONE,
AS HAS BEEN PROVIDED IN A NUMBER OF SAFEGUARDS AGREEMENTS
CONCLUDED BETWEEN THE STATES PARTIES TO THE TREATY OF TLATELOLCO
AND THE IAEA. PRESENT IAEA SAFEGUARDS WOULD ONLY VERIFY NUCLEAR
ACTIVITIES THAT ARE DECLARED TO THE AGENCY AS PRESCRIBED IN
SAFEGUARDS AGREEMENTS. THEREFORE, A TASK OF THE ZONE'S
VERIFICATION AND CONTOL SYSTEM SHOULD BE TO ENSURE THAT ALL
NUCLEAR ACTIVITIES IN THE ZONE HAVE IN FACT BEEN DECLARED TO THE IAEA

7. IN REGARD TO THE SECOND ASPECT OF VERIFICATION, AS THERE ARE
LIMITS TO WHAT TASKS CAN BE UNDERTAKEN BY THE IAEA, IT COULD BE
NECESSARY, DEPENDING ON THE PROVISIONS OF THE ZONE TREATY IN EACH CASE,

TO PROVIDE ADDITIONAL MACHINERY TO VERIFY THAT THE ZONE IS EFFECTIVELY
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FREE OF NUCLEAR WEAPONS COMING FROM OUTSIDE SOURCES, AND IF SUCH
WEAPONS ARE PRESENT IN THE AREA, THAT THEY ARE WITHDRAWN. SOME
EXPERTS FELT THAT SUCH ADDITIONAL VERIFICATION COULD IMPLY
PERMITTING INSPECTORS TO VISIT MILITARY INSTALLATIONS, NAVAL VESSELS
AND MILITARY AIRCRAFT WITHIN THE ZONE AND THAT IT COULD ALSO
PROVIDE, IF PRESCRIBED IN THE ZONE TREATY, THAT NUCLEAR
WEAPONS ARE NOT TRANSPORTED OUTSIDE THE ZONE BY SHIPS AND AIRPLANS
BELONGING TO ZONAL STATES. SOME EXPERTS POINTED OUT AHT
ADEQUATE VERIFICATION IN ANY AREA OF THE HIGH SEAS, IF SUCH
AREAS ARE INCORPORATED IN NUCLEAR-WEAPON-FREE ZONES AND IN
MILITARY BASES OF NUCLEAR WEAPON STATES, IF SUCH BASES ARE SITUATED
IN NUCLEAR-WEAPON-FREE ZONES, WOULD RAISE SPECIFIC PROBLEMS
WHICH SHOULD BE FULLY TAKEN INTO ACCOUNT IN THE ESTABLISHMENT
OF SUCH ZONES. WITH REFERENCE TO THE IDEA THAT A NUCLEAR-

WEAPON-FREE ZONE COULD INCLUDE HIGH SEAS, STRAITS USED FOR INTERNATIONAL SHIPPING, AND INTERNATIONAL AIRSPACE, SEVERAL EXPERTS NOTED THAT HIS IDEA NOT ONLY RAISES SERIOUS, AND PERHAPS INSUPERABLE, SECURITY, POLITICAL AND LEGAL PROBLEMS, BUT THAT IT WOULD BE EXTREMELY DIFFICULT TO VERIFY THE NUCLEAR-WEAPON-FREE ZONE STATUS OS SUCH AREAS.

8. EXISTING REGIONAL OR INTERNATIONAL ORGANIZATIONS MIGHT BE ABLE TO UNDERTAKE SUCH VERIFICATION RESPONSIBILITIES DESCRIBED ABOVE. HOWEVER, IN MANY REGIONS IT MIGHT BE PREFERABLE TO ESTABLISH STANDING REGIONAL BODIES OR SPECIAL ORGANS FOR THE IMPLEMENTATION OF VERIFICATION PROCEDURES OTHER THAN THOSE OF THE IAEA. ON OF THE FUNCTIONS OF SUCH AGENCIES COULD BE TO MONITOR AND CO-ORDINATE THE WORK OF APPROPRIATE NATIONAL AUTHORITIES RESPONSIBLE FOR THE NECESSARY VERIFICATION PROCEDURES IN EACH COUNTRY PARTY TO A NUCLEAR-WEAPON-FREE ZONE AGREEMENT. SUCH REGIONAL BODIES OR ORGANS COULD CARRY OUT PERIODIC AND AD HOC INSPECTIONS.

9. IN ESTABLISHING PROCEDURES FOR VERIFICATION THE ZONE ARRANGEMENTS SHOULD PROVIDE FOR A PROCESS OF INVESTIGATIONS AND INSPECTIONS BETWEEN COUNTRIES CONCERNED. A DETAILED CONSULTATION PROCEDURE WOULD PROVIDE AN IMPORTANT MEANS FOR DEALING WITH QUESTIONS OF SUSPECTED NON-COMPLIANCE.

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10. IT MIGHT BE DESIRABLE TO PROVIDE FOR A MULTILATERAL BODY OF STATES PARTIES TO A NUCLEAR-WEAPON-FREE ZONE WITH THE TASK OF CONSIDERING REPORTS MADE BY A STANDING CONTROL AGENCY REGARDING THE IMPLEMENTATION OF THE PROVISIONS OF THE TREATY, AND MAKING RECOMMENDATIONS IN RESPECT OF SUCH IMPLEMENTATION, ON POSSIBLE INVESTIGATIONS AND INSPECTIONS, AND ON SUSPECTED VIOLATIONS.

ONE IMPORTANT RESPONSIBILITY OF SUCH A MULTILATERAL BODY WOULD BE TO CONSIDER ISSUES ON NON-COMPLIANCE, WHEN CONSULTATIONS BETWEEN INDIVIDUAL STATES PARTIES TO A ZONE TREATY HAVE FAILED TO SETTLE THE ISSUE. THE EXISTENCE OF SUCH A BODY SHOULD NOT EXCLUDE, HOWEVER, THE POSSIBILITY THAT ANY OUTSTANDING ISSUE ARISING DURING THE COURSE OF A CONSULTATION PROCESS ARE REFERRED TO THE UN SECURITY COUNCIL OR GENERAL ASSEMBLY, OR TO OTHER APPROPRIATE AND COMPETENT INTERNATIONAL ORGANS.

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2. SAFEGUARDS ON PEACEFUL USES OF NUCLEAR ENERGY

11. AS ALREADY INDICATED, THE IAEA SAFEGUARDS SYSTEM COULD PLAY AN IMPORTANT ROLE IN THE VERIFICATION OF THE IMPLEMENTATION OF NUCLEAR-WEAPON-FREE- ZONE PROVISIONS. THE EXACT MANDATE OF THE IAEA WOULD ESSENTIALLY BE DETERMINED BY TWO FACTORS. ONE IS THE PRECISE PROVISIONS OF THE AGREEMENTS ESTABLISHING ZONES AND THE TASKS GIVEN TO THE IAEA THEREIN. THE OTHER IS THE STATUTE OF THE IAEA PRESCRIBING WHAT DUTIES THE AGENCY CAN ASSUME. THE LATTER (ART.III.5) PERMITS THE AGENCY "TO APPLY SAFEGUARDS, AT THE REQUEST OF THE PARTIES, TO ANY BILATERAL OR MULTILATERAL ARRANGEMENT, OR AT THE REQUEST OF A STATE, TO ANY OF THAT STATE'S ACTIVITIES IN THE FIELD OF ATOMIC ENERGY."

12. IT WOULD THUS BE POSSIBLE TO SOLVE ONE PART OF THE VERIFICATION PROBLEM OF NUCLEAR-WEAPON-FREE ZONES, THAT OF ASSURING THAT THE NUCLEAR MATERIALS IN ZONAL STATES WOULD NOT BE USED FOR THE MANUFACTURE OF NUCLEAR SEAPONS BY APPLYING IAEA

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SAFEGUARDS TO ALL SUCH MATERIALS.

13. AN OBLIGATION OF THE STATES INCLUDED IN A ZONE TO SUBMIT ALL THEIR NUCLEAR ACTIVITIES TO IAEA SAFEGUARDS WOULD HAVE TO BE EXPRESSLY LAID DOWN IN THE CONSTITUENT INSTRUMENT OF THE ZONE. THE NECESSARY AGREEMENTS WITH IAEA MAY BE CONCLUDED IN ONE OF THREE WAYS:

(A) BY LEAVING EACH STATE TO NEGOTIATE DIRECTLY WITH THE IAEA;
(B) BY NEGOTIATING A COLLECTIVE AGREEMENT WITH IAEA AT THE SAME TIME AS THE CONSTITUENT TREATY; OR (C) BY INDIVIDUAL BUT SIMULTANEOUS NEGOTIATIONS BETWEEN IAEA AND THE PARTIES. IT COULD BE MORE EFFICIENT TO CONCLUDE A COLLECTIVE AGREEMENT WITH IAEA, PROVIDED THAT THIS COMES INTO FORCE FOR EACH STATE UPON ACCESSION TO THE TREATY CONSTITUTING THE ZONE; IN THIS WAY STATES WOULD COMPLY AT THE OUTSET WITH A CONDITION ESSENTIAL TO THE SATISFACTORY OPERATION OF THEIR ZONE. IN CASES WHERE COLLECTIVE NEGOTIATIONS ARE NOT POSSIBLE, PROVISIONS SHOULD BE MADE FOR THE SIMULTANEOUS ENTRY INTO FORCE OF THE ZONE-TREATY AND ALL SAFEGUARDS AGREEMENTS RELATED THERETO.

14. A DESIRABLE ELEMENT IN A VERIFICATION SYSTEM WOULD BE A PROVISION THAT STATES IN A ZONE SHOULD APPLY ADEQUATE STANDARDS OF PHYSICAL PROTECTION TO FISSILE MATERIAL IN THE ZONE IN ORDER TO PREVENT UNAUTHORIZED GROUPS, BY THEFT OR OTHERWISE, FROM DIVERTING SUCH MATERIAL AND MAKING THEIR OWN NUCLEAR WEAPONS.

3. INSPECTIONS

15. WHEN IAEA SAFEGUARDS ARE APPLIED INSPECTIONS WILL TAKE PLACE AS AN INTEGRAL PART OF THE PROCEDURE IN ACCORDANCE WITH THE SAFEGUARDS AGREEMENTS IN FORCE.

16. A STANDING CONTROL AGENCY OF A NUCLEAR-WEAPON-FREE ZONE COULD BE EMPOWERED WITH THE TASK OF CARRYING OUT BOTH ROUTINE AND AD HOC INSPECTIONS AS AN ELEMENT OF ITS PROCEDURE TO ENSURE THE FULLFILLMENT OF ANY OBLIGATION NOT VERIFIED BY THE IAEA. SUCH INSPECTIONS COULD BE UNDERTAKEN BY THE CONTROL AGENCY ON ITS OWN INITIATIVE, AT THE REQUEST OF INDIVIDUAL STATES PARTIES TO THE ZONE TREATY OR BY A MULTILATERAL BODY INSTITUTED BY THE SAME TREATY. THIS KIND OF PROCEDURE IS PROVIDED FOR IN THE TREATY OF TLAZOLCO (ARTICLE 16) AND IN THE TREATY OF ANTARCTICA (ARTICLE VII).

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4. ROLE OF THE IAEA, REGIONAL ORGANIZATIONS AND NATIONAL ORGANS

17. PROPER EXECUTION OF VERIFICATION PROCEDURES MAKES CLOSE CO-OPERATION BETWEEN THE VARIOUS COMPETENT ORGANS ON THE INTERNATIONAL, REGIONAL AND NATIONAL LEVELS ESSENTIAL. SOME EXPERTS SUGGESTED THAT SUCH CO-OPERATION MIGHT ALSO INCLUDE SEEKING RELEVANT INFORMATION FROM OUTSIDE SOURCES, POSSIBLY ON

A ROUTINE BASIS.

18. THE ROLE OF THE IAEA WOULD BE TO ASSUME, IN ACCORDANCE WITH ITS STATUTE, THE RESPONSIBILITY FOR ALL SAFEGUARDS ENVISAGED IN THE ZONE-TREATY AND SUBSEQUENT AGREEMENTS BETWEEN THE IAEA, REGIONAL ZONE AUTHORITIES AND ZONAL STATES. THE IAEA INSPECTORS WOULD REPORT ANY NON-COMPLIANCE TO THEIR DIRECTOR GENERAL WHO THEREUPON TRANSMITS THE REPORT TO THE AGENCY'S BOARD OF GOVERNORS. THE BOARD THEN CALLS UPON THE STATE OR STATES CONCERNED TO REMEDY FOR WITH ANY NON-COMPLIANCE WHICH IT FINDS TO HAVE OCCURRED. THE BOARD ALSO REPORTS THE NON-COMPLIANCE TO ALL MEMBER STATES OF THE IAEA AND TO THE UN SECURITY COUNCIL AND THE GENERAL ASSEMBLY. THIS PROCEDURE, PRESCRIBED IN THE AGENCY'S STATUTE (ART. XII.C) HAS NEVER BEEN INVOKED. IN CASE OF A NUCLEAR-WEAPON-FREE ZONE, THE BOARD SHOULD ALSO REPORT CASES OF NON-COMPLIANCE TO ALL PARTIES OF THE ZONE TREATY AND, AS APPROPRIATE, TO REGIONAL BODIES AND ORGANS SERVING THE ZONE. THE IAEA AND SUCH BODIES AND ORGANS COULD CONCLUDE FORMAL AGREEMENTS ON EXCHANGE OF INFORMATION BETWEEN THEM.

19. THE APPLICATION OF IAEA SAFEGUARDS TO THE NUCLEAR ACTIVITIES OF A COUNTRY PRESUMES THE EXISTENCE OF A NATIONAL OR REGIONAL AUTHORITY FOR ACCOUNTING AND CONTROL OF ALL NUCLEAR MATERIAL SUBJECT TO SAFEGUARDS. THE POSSIBILITY OF GIVING A NATIONAL AUTHORITY RESPONSIBILITY FOR THE IMPLEMENTATION OF VERIFICATION PROCEDURES OTHER THAN THOSE OF IAEA HAS BEEN INDICATED ABOVE.

20. MOREOVER, A REGIONAL BODY OR SPECIAL ORGAN RESPONSIBLE FOR VERIFICATION OF A ZONAL AGREEMENT COULD BE GIVEN AUTHORITY TO INVESTIGATE SUSPECTED CAUSES OF NON-COMPLIANCE. THE PRECISE MANDATE AND PROCEDURE OF SUCH REGIONAL BODIES OR SPECIAL ORGANS WOULD HAVE TO BE DEFINED IN THE TREATY CONSTITUTING THE ZONE.

21. IT WAS STRESSED THAT USE COULD BE MADE OF THE FACT THAT THE UNCLASSIFIED

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UNITED NATIONS HAS THE POWER TO RECTIFY OR REMEDY INFRINGEMENTS OR VIOLATIONS OF ZONAL TREATIES IN EXERCISE OF FUNCTIONS ASSIGNED TO IT BY ITS CHARTER FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY.

22. BOTH IAEA AND REGIONAL CONTROL AGENCIES COULD BE ENTRUSTED BY STATES TO ASSIST IN THE COORDINATION OF THE ACTIVITIES OF NATIONAL AUTHORITIES DEALING WITH VERIFICATION AND CONTROL.

23. IN CERTAIN REGIONS STATES PARTIES TO A ZONAL TREATY MAY WISH TO ASSIGN ALL VERIFICATION RESPONSIBILITIES OF A NUCLEAR-WEAPON-FREE ZONE TO A SPECIAL ORGAN WITHIN THE IAEA STRUCTURE. HOWEVER, SUCH A PROVISION WOULD GO BEYOND THE TASK AT PRESENT UNDERTAKEN BY IAEA AND MIGHT REQUIRE AN AMENDMENT OF THE

AGENCY'S STATUTE.

5. CREATION OF AD HOC AGENCIES

24. AD HOC AGENCIES MIGHT BE THE MOST USEFUL MEANS OF ORGANIZING THE EXECUTION OF OVERALL VERIFICATION AND CONTROL OF NUCLEAR-WEAPON-FREE ZONES. THIS IS ARGUED FOR TWO REASONS: (1) EXISTING REGIONAL ORGANIZATIONS MAY NOT BE SUITED TO SUCH FUNCTIONS, BECAUSE THEIR AIMS ARE EITHER TOO GENERAL OR, ON THE CONTRARY, TOO SPECIALIZED AND (2) THE COMPOSITION OF SUCH ORGANIZATIONS MAY NOT CORRESPOND TO THAT OF A NUCLEAR-WEAPON-FREE ZONE, BECAUSE THEY INCLUDE EITHER A GREATER NUMBER OF STATES, SOME OUTSIDE THE ZONE, OR A SMALLER NUMBER OF STATES, SOME COUNTRIES WITHIN THE ZONE NOT BEING MEMBERS. IN SUCH CASES VERIFICATION AND CONTROL IN A ZONE MIGHT MORE EFFECTIVELY BE EXERCISED BY AN AD HOC AGENCY ESPECIALLY TAILORED TO THE COMPOSITION AND PURPOSES OF THE ZONE AND DESIGNED PRIMARILY FOR SUCH VERIFICATION AND CONTROL. END TEXT
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